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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**



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| In the Matter of | ) | |
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| Petition of the Association for Local | ) | |
| Telecommunications Services (ALTS) for a | ) | |
| Declaratory Ruling Establishing Conditions | ) | CC Docket No. 98-78 |
| Necessary to Promote Deployment of | ) | |
| Advanced Telecommunications Capability | ) | |
| Under Section 706 of the Telecommunications | ) | |
| Act of 1996 | ) | |

# OPPOSITION OF GTE

Dated: June 18, 1998

GTE Service Corporation and its affiliated telecommunications companies

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# OPPOSITION OF GTE

GTE Service Corporation and its affiliated telecommunications companies[1] (collectively, "GTE") respectfully submits these comments in opposition to the Association for Local Telecommunications Services ("ALTS") Petition for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-78, filed on May 27, 1998 (the "ALTS Petition").

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[1] These companies include: GTE Alaska Incorporated; GTE Arkansas Incorporated; GTE California Incorporated; GTE Florida Incorporated; GTE Hawaiian Telephone Company Incorporated; The Micronesia Telecommunications Corporation; GTE Midwest Incorporated; GTE North Incorporated; GTE Northwest Incorporated; GTE South Incorporated; GTE Southwest Incorporated; Contel of Minnesota, Inc.; and Contel of the South, Inc.; GTE Communications Corporation.

## I. INTRODUCTION AND SUMMARY

The ALTS Petition is another in a series of requests that the Commission consider the issue of advanced data networks. The Petition seeks a declaration that certain sections of the Act apply when the Incumbent LEC provides advanced data services. The ALTS Petition was filed closely on the heels of Petitions filed by Bell Atlantic,[2] Ameritech[3] and U S West[4] (collectively, the "RBOC Petitions") seeking relief from requirements viewed as barriers to the deployment of advanced telecommunications services, and a Petition filed by the Alliance for Public Technology ("APT"),[5] requesting that the Commission issue a Notice of Inquiry ("NOI") and a Notice of Proposed Rulemaking ("NPRM") to implement Section 706 of the 1996 Telecommunications Act. ALTS suggests a series of actions it argues should be taken by the Commission to promote the deployment of advanced telecommunications services as mandated by Section 706 of the Act. Specifically, ALTS suggests that the FCC should:

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2 Petition of Bell Atlantic for Relief from Barriers to Deployment of Advanced Telecommunications Service, CC Docket No. 98-11, filed January 26, 1998.

3 Petition of Ameritech for Relief from Barriers to Investment in Advanced Telecommunications Capability, CC Docket 98-32, filed March 5, 1998.

4 Petition of U S West for Relief from Barriers to Deployment of Advanced Telecommunications Services. CC Docket No. 98-26, filed February 25, 1998.

5 Petition of the Alliance for Public Technology Requesting Issuance of a Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act, CCB/CPD 98-15, filed on February 18, 1998.

- declare that the interconnection, collocation, unbundling and resale requirements of Sections 251, 252 and 271 of the 1996 Act apply fully to digital and broadband services and facilities;
- exercise its authority under Section 251(c)(6) of the Act to re-open CC Docket No. 91-141 and establish new rules and rates for collocation;
- confirm that interconnection applies to digital facilities and services;
- confirm that unbundling should apply to digital technology.
- make certain that any action it may take under Section 706 is consistent with interconnection rules and policies adopted by state commissions.[6]

The ALTS Petition, like the other petitions filed, asks the Commission to act consistent with the requirements of Section 706. Section 706 specifically directs the Commission to conduct a formal inquiry into the deployment of advanced telecommunications services to all Americans within 30 months following the date of the enactment of the 1996 Act. GTE questions why the Commission would act through a declaratory ruling, as requested by ALTS, when it is already under a statutory requirement to consider these issues. Instead of considering individually each of these Petitions, GTE urges the Commission immediately to initiate the inquiry mandated by the statute.

Despite the suggestions to the contrary in the ALTS Petition, CLECs have been successfully negotiating or arbitrating interconnection agreements with the Incumbent LECs ("ILECs"). The GTE companies have already negotiated interconnection agreements for digital networks with CLECs in states where GTE provides local exchange service and will continue to do so in the future. There is ample and growing

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[6] ALTS Petition at 2-3.

evidence that the pro-competitive safeguards set forth by Congress in the Act are being implemented as intended through negotiation and arbitration. Nothing in ALTS Petition refutes these facts.

It is undeniable that technology is developing rapidly and leading to many new and exciting services. GTE recently filed its ADSL tariff establishing this new digital service as an access service. In this way, ADSL service will be available on a nondiscriminatory basis to all from GTE's ADSL-equipped serving offices. CLECs can also offer competing ADSL services by using ADSL-conditioned local loops. ALTS would have the Commission declare that digital and broadband technologies, such as ADSL, are subject to the unbundling and resale requirements of the 1996 Act. GTE urges the Commission to deny the ALTS request. Imposing additional obligations would be inconsistent with the Act, completely unwarranted in today's competitive environment and likely to deter incentives for Incumbent LECs to invest in new technologies. Forbearance, not additional regulation, is warranted for advanced technologies.

## II. DISCUSSION

### A. The ALTS Petition for Declaratory Ruling is Premature. The Commission Should Immediately Initiate its Section 706 Inquiry.

The proposals in the ALTS Petition offer little additional insight into the complex issues involved in the evolving telecommunications networks than has been already placed on the record in the RBOC Petitions and the APT Petition. Most of the commenters opposing the RBOC petitions make the same claims found in the ALTS Petition. As GTE and others pointed out in Comments to the APT Petition, a piecemeal

approach to reform cannot achieve the goals of deregulation, competition, and economically efficient pricing envisioned by the 1996 Act.[7] Neither the ALTS Petition nor the other petitions addressing the Section 706 issues is sufficient to provide the record needed by the Commission to decide to what extent, if any, Sections 251 and 252 apply to advanced data networks.

GTE suggested in its Comments to the APT Petition that the Commission can capitalize on the experiences learned in the other proceedings pursuant to the 1996 Act and initiate a proceeding, under the authority granted by Section 706, to consider the critical issues impacting the economically efficient provision of advanced data networks. So far the record suggests that avoiding unnecessary requirements is critical to the continued development of advanced telecommunications infrastructure. GTE firmly believes that there is no compelling evidence that Congress intended to include advanced data networks and their individual components as potential "bottleneck" facilities when it crafted the 1996 Act. Therefore, GTE reiterates here its suggestion that the Commission immediately initiate the inquiry mandated by Section 706 to

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[7] Comments of GTE, Petition of the Alliance for Public Technology Requesting Issuance of a Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act, CCB/CPD 98-15, filed on April 13, 1998, at 3.

compile the comprehensive record required to ensure the goals of advanced data services to all Americans is reached in a timely and a competitively neutral manner.[8]

### B. Incumbent LECs Have Facilitated Competitive Entry in the Local Exchange And Exchange Access Markets by Entering Into Hundreds of Interconnection Agreements.

Section 251(c) requires all Incumbent LECs to negotiate interconnection agreements with competitors and provide them with unbundled access to network elements. This section of the Act is frequently quoted by competitive LECs arguing that Incumbent LECs are not complying fully with the Act and that regulatory relief must be provided or withheld until Incumbent LECs meet these conditions. Throughout the ALTS Petition are suggestions that Incumbent LECs have not been complying with their interconnection obligations. But even ALTS acknowledges[9] that Section 251(c) provides a remedy. The Act anticipates state commission arbitration to resolve disputes that inevitably arise during the negotiation process for interconnection agreements. CLECs have been using these procedures. GTE suggests that this process is working and no Commission intervention is needed.

Arguments that Incumbent LECs have not fully complied with Section 251(c) obligations are unavailing. As described by Schmalensee and Taylor, Incumbent LECs

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[8] This is not to suggest that the Commission should delay action upon a well-taken forbearance petition or commit such a petition to the more comprehensive Section 706 proceeding. Rather, the Commission should act expeditiously on such a petition and thereby relieve regulatory impediments to the introduction of advanced services. SBC's June 9, 1998 Petition regarding ADSL services presents the Commission with a specific opportunity to fulfill the mandates of Section 10 and 706 of the Act.

[9] ALTS Petition at 12.

have negotiated more than one thousand interconnection agreements.[10] More importantly, in those instances when agreements could not be reached, the arbitration process has been used effectively, with results favoring Incumbent LECs in some occasions and CLECs in others. The point is that Incumbent LECs are fully complying with the terms of the Act. Congress wisely recognized that legislation and the subsequent regulation could only set the ground rules for opening local markets to competition by creating an explicit requirement that both incumbents and competitors negotiate agreements, and placing the burden of arbitrating disputes in the hands of state commissions. It is the negotiation process with a backstop of arbitration that ultimately settles the competitive issues of interconnection and collocation.

Schmalensee and Taylor provide further evidence that these and subsequent agreements are providing competitors with the tools necessary to compete effectively. To date, according to a USTA press release, the largest Incumbent LECs have spent more than $4 billion to open their markets to competitors. Nationally, as of October 1997, Incumbent LECs (not including Ameritech) supplied approximately 1,147 collocation cages and 3,805 NXX codes.

Given that more than one thousand interconnection agreements already exist, some reached directly, others as the result of arbitration, the Commission is well armed with a more than sufficient record that Incumbent LECs are fully complying with Section

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[10] *The Need For Carrier Access Pricing Flexibility In Light Of Recent Marketplace Developments*, Richard Schmalensee and William Taylor, National Economic Research Associates ("NERA"), *Ex Parte*, CC Docket No. 96-262, filed Jan. 16, 1998, citing USTA statistics that as of July 1, 1997 there were a total of 1,231 interconnection agreements.

251(c). Therefore, the Commission should not heed ALTS' suggestions that interconnection mechanisms are not working.

### C. Requiring Incumbent LECs to Offer ADSL-Equipped Loops as Unbundled Network Elements is Neither Required by the 1996 Act Nor Necessary.

In its Petition, ALTS asks the Commission to declare that digital and broadband technologies, such as ADSL, are subject to the unbundling requirements of the 1996 Act. ALTS contends that such action is necessary to help "jump-start"[11] the expansion of CLEC data networks. GTE urges the Commission to deny the ALTS request. Additional unbundling obligations are inconsistent with the Act and completely unwarranted in today's competitive environment.

#### 1. Legal Basis

There is no statutory or regulatory requirement that ILECs offer ADSL-equipped loops as unbundled network elements ("UNEs"). Section 251(c)(3) of the 1996 Act imposes a general duty on ILECs to "provide . . . nondiscriminatory access to network elements on an unbundled basis."[12] In adopting this general provision, Congress granted the Commission the authority to determine those network elements that must be offered as UNEs.[13] Using this discretionary authority, the Commission has identified a number of network elements that ILECs must provide on an unbundled basis, including, *inter alia*, the local loop, network interface devices, local switching, and

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[11] ALTS Petition at ii, 3.

[12] 47 U.S.C. § 251(c)(3).

[13] 47 U.S.C. § 251(d)(2).

tandem switching.[14] The Commission did not include ADSL-equipped loops among the list of UNEs, and there is no reason to do so now.

Imposing this additional obligation on ILECs is wholly unwarranted. As the 1996 Act and the Commission's rules make clear, ILECs must provide competitors with access to unbundled loops. Moreover, it is clear that ILECs have a duty to condition a loop to carry digital loop functionality, such as ADSL.[15] The Commission has explicitly stated that "loop conditioning [ ] is encompassed within the duty imposed by Section 251(c)(3)."[16] GTE submits that loop conditioning is where the ILEC's duty ends.

The requirement to unbundle network elements was not meant to be an unbounded mandate for ILECs to hand over all of their innovative offerings and capabilities to competitors. There are limitations. As Commissioner Tristani points out, although "Congress wisely intended to give competitors a right to lease pieceparts from the incumbent to provide competing service. . . . Congress did so with an awareness

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[14] *See* 47 C.F.R. § 319.

[15] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15794 (¶302) (the *Local Competition Order*), *stay granted in part sub nom. Iowa Utilities Board v. FCC*, 109 F.3d 418 (8th Cir. 1996), *motions to vacate stay denied*, 117 S.Ct. 378-79 (1996), *order vacated in part on other grounds and aff'd in part*, 120 F.3d 753 (8th Cir. 1997), *mandate enforced*, 135 F.3d 535 (8th Cir. 1998), *cert. granted sub nom. AT&T Corp. v. Iowa Utilities Board*, No. 97-826 (October Term, 1997). ("if a competitor seeks to provide a digital loop functionality, such as ADSL, and the loop is not currently conditioned to carry digital signals, but it is technically feasible to condition the facility, the incumbent LEC must condition the loop to permit the transmission of digital signals.")

[16] *Id.* at ¶382.

that unbundling rights have limits."[17] Indeed, Congress injected an element of necessity into this arena to ensure that ILECs were afforded some level of protection. Specifically, the 1996 Act requires the FCC and states to determine whether access to certain proprietary network elements is "necessary."[18] The Commission has interpreted "necessary" to mean "an element is a prerequisite for competition."[19]

Using the Commission's definition, the only "necessary" network element that must be provided by the ILEC is the conditioned loop. Access to the loop can only be obtained through the ILEC. However, the electronics that then make the copper loop ADSL-functional can be obtained through a variety of sources. The market for ADSL and other broadband equipment is quite competitive. The wide-spread availability of this equipment (*e.g.*, DSLAMs) makes the barriers for entry into the advanced services market quite low. As several carriers recently pointed out in the proceeding considering the RBOC Petitions, competitors with a conditioned loop from the ILEC can provide a competitive ADSL service offering.[20] Once they have access to the conditioned loop, competitors are free to place the same, similar, or different electronics on the loop to

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17 Remarks of Commissioner Gloria Tristani before the U.S West Regional Oversight Committee (April 27, 1998).

18 47 U.S.C. § 251(d)(2)(A).

19 *Local Competition Order* at ¶137

20 *See, e.g.,* Bell Atlantic Reply Comments, In the Matter of Petition of Bell Atlantic Corporation for Relief from Barriers to deployment of Advanced Telecommunications Services, CC Docket Nos. 98-11, 98-26, 98-32, at 23 (filed May 6, 1998); Comments of the Competition Policy Institute, CC Docket Nos. 98-11, 98-26, 98-32, at 10 (filed April 6, 1998).

provide their own advanced data service. Thus, access to an ADSL-equipped loop is hardly a "prerequisite for competition."[21]

The Commission recognizes that limitations to the unbundling requirement are necessary and appropriate. GTE submits that there must be an equitable balance such that neither CLECs nor ILECs are unfairly and unnecessarily disadvantaged. GTE is fully committed to fulfilling its obligation to provide conditioned copper loops to requesting carriers.

**2. Public Interest**

Avoidance of unreasonable unbundling requirements is absolutely critical to the continued development of an advanced telecommunications infrastructure and the accompanying advanced data services such as ADSL. Saddling ILECs with the additional duty to unbundle loops equipped with ADSL electronics will undoubtedly deter incentives to invest and innovate. Consumers will be the ultimate losers. Unnecessary unbundling obligations, like those proposed by ALTS, will severely distort carriers' incentives to invest in infrastructure development and the deployment of advanced telecommunications capabilities. Commissioner Tristani recognizes this all too real danger. She states, "[i]n the rush to unbundle networks, . . . we need to carefully consider the effect of unbundling on the incumbent's incentives to motivate and deploy new technologies . . ."[22] Commissioner Powell also acknowledges the

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[21] *Local Competition Order* at ¶137

[22] Remarks of Commissioner Gloria Tristani before the U.S West Regional Oversight Committee (April 27, 1998).

importance of protecting and encouraging incentives and innovation. According to him, one fundamental way to incent innovation is by "[g]ranting greater proprietary rewards to the innovator, allowing him to exclude others from his creation or expression for some period of time, as in the intellectual property context."[23]

This reduced incentive to innovate is not limited to ILECs. If competitors are allowed to access freely the investments and innovations of GTE and other Incumbent LECs, they will have less incentive to develop their own new and creative offerings of advanced services. The result will be a significant underinvestment in advanced capabilities and services that Congress instructed the FCC to encourage. This inevitable chilling effect cannot and should not be ignored. Therefore, the Commission should deny ALTS' request for a declaratory ruling that ILECs are obligated to offer digital and broadband technologies on an unbundled basis.

As Bell South suggested in the closely related proceeding considering the RBOC Petitions, the FCC should determine that Section 251(c) applies only to Incumbent LEC networks as those networks existed when the 1996 Act became effective.[24] GTE agrees that this interpretation "would promote competition and encourage innovation by permitting ILECs to obtain benefits of new technologies introduced into their networks."[25] This interpretation strikes an important balance between fostering market

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[23] Speech of Commissioner K. Powell before the Legg Mason Investor Workshop, Technology and Regulatory Thinking – Albert Einstein's Warning (March 13, 1998).

[24] Comments of BellSouth at 11.

[25] *Id.*

entry and competition by CLECs and preserving innovation incentives for all carriers. In addition, it does not take anything away from competitors or disadvantage them in any way. ILECs enjoy no advantages over CLECs in obtaining ADSL equipment.

Despite ALTS' attempt to paint a dismal picture of the future of competition in the advanced services market, CLECs are moving forward in the absence of the additional regulatory restrictions sought by Petitioner. As ALTS itself points out :

> CLECs were the first to introduce fiber ring networks and synchronous optical network ("SONET")-based services, and are at the forefront in deploying new digital subscriber line ("ADSL") technologies. . . . CLECs have risked enormous amounts of capital, and supported CLEC efforts to deploy these advanced services in hundreds of markets in only a few years' time.[26]

There are several competitive alternatives available today that deliver high-bandwidth access to end users. The Public Switched Telephone Network ("PSTN"), ISDN, cable modems, wireless systems, and satellites are all technologies that represent access alternatives for consumers. The competition is vigorous. For example, cable companies are aggressively marketing access using cable modem technology. It is estimated that the number of cable modem subscribers passed the 200,000 mark on May 1, 1998, with cable modem service being available to more than 11 million homes (or approximately 11 percent of all cable homes passed in North America).[27] Furthermore, North American cable operators are currently adding more

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[26] ALTS Petition at 4.

[27] http:\\cabledatacommnews.com/cmic16.htm, "Cable Modem Market Stats and Projections." (May 28, 1998).

than 1,000 cable modem subscribers per day. Penetration is expected to reach 400,000 by year end and top one million by the end of 1999.[28] GTE's ADSL service will create increased competition in this access market.

ALTS also states that "CLECs are aggressively providing digital services throughout the nation using XDSL and other technologies."[29] ALTS' own admissions illustrate that competition and innovation are flourishing in the advanced telecommunications market. There is simply no need to add more regulations when the intent of the 1996 Act was to promote a "pro-competitive, deregulatory environment."

### D. Requiring Incumbent LECs to Offer ADSL-Equipped Loops to CLECs at Wholesale Rates is Neither Required by the 1996 Act Nor Necessary.

ALTS asks the Commission to declare that Incumbent LECs must apply the resale discount requirement of Section 251(c)(4) to ADSL and other broadband services and facilities. ALTS contends that wholesale rates are necessary to allow CLECs to compete effectively in the market for advanced telecommunications capabilities. The Commission should also deny this request.

Section 251(c)(4) imposes a duty on ILECs to offer certain services for resale at wholesale rates. The 1996 Act requires an ILEC to "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers."[30] This obligation, however, does not apply to ADSL

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28 *Id.*

29 *Id.* at 9.

30 47 U.S.C. § 251(c)(4)(A).

offerings. ILECs are not required to provide ADSL-equipped loops to competitors because such functionality is an exchange access service. The Commission has unambiguously concluded that "[e]xchange access services are not subject to the resale requirement of section 251(c)(4)."[31]

Instead of offering a meaningful explanation as to why ADSL or other high-speed copper loop technologies are not "access services," ALTS only suggests, in passing, that they are not.[32] The Petitioner's only "proof" that ADSL is not an access service is the fact that some ILECs are providing this high-speed technology to their retail customers.[33] This "proof" is hardly the persuasive evidence needed to demonstrate that ADSL is not an "access service."

Neither the 1996 Act nor the Commission's Rules support ALTS' restrictive definition of "access service." Under 47 C.F.R. § 69.2(b), "access service" is defined as including "services and facilities provided for the origination or termination of any interstate or foreign telecommunication." The definition therefore rests on the nature of the transmission,[34] not the identity of the purchaser. In fact, the Commission has made

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31 *Local Competition Order* at ¶ 873.

32 *See* ALTS Petition at 13.

33 ALTS Petition at 13.

34 *See, e.g., General Telephone of California v. FCC*, 413 F.2d 390, 401 (D.C. Cir. 1969).

it clear that "[t]he mere fact that . . . a small number of end users do purchase some [ ] [access] services, does not alter the essential nature of the services."[35]

Furthermore, ALTS does nothing to dispute the fact that broadband services such as ADSL are a form of "telecommunications," and that these offerings plainly meet the 1996 Act's definition of that term.[36] The simple fact remains that ADSL is a service used to originate and terminate interstate telecommunications. Therefore, ADSL is jurisdictionally interstate under longstanding FCC precedent and is properly classified as an access service.[37]

As with the unbundling requirement, requiring ILECs to resell their ADSL-equipped loop to CLECs at a discount would inhibit investment and innovation. As discussed in detail above, both ILECs and CLECs would have less incentive to offer innovative services and functionalities. Why would an Incumbent LEC invest the time, capital, and other resources to develop new service offerings if it must turn around and offer them to CLECs at fire sale prices? Furthermore, why would a CLEC invest in research and development and expend resources on creating new advanced telecommunications products and services, if they can buy them cheap from ILECs? Mandating discounted resale inevitably would deprive consumers of advanced

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35 *Local Competition Order* at ¶874.

36 The Act defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received." 47 U.S.C. § 153(43).

37 *Local Competition Order* at ¶874.

telecommunications services, which promise to usher in a new era of high-speed access to the Internet.

### E. The Commission Should Reject ALTS' Suggestion That ADSL is an Intrastate Offering.

Plainly, ALTS' agenda regarding ADSL services is far broader than its Petition suggests. ALTS' fundamental goal is to preserve the wholly unjustified windfall its members receive in those states where an Internet call is erroneously considered an intrastate service subject to reciprocal compensation. To this end, ALTS sprinkles its Petition with subtle references to convince the Commission that high-speed copper loop technologies such as ADSL are intrastate offerings. For example, ALTS describes several ILECs as "reneg[ing] on their obligation to pay reciprocal compensation for local calls placed to ISPs."[38] This assertion presupposes that a call to access the Internet is in fact a local call and therefore subject to reciprocal compensation. GTE disagrees.

The overwhelming weight of authority confirms that, at a minimum, a large proportion of Internet traffic is interstate in nature. Moreover, any intraLATA traffic carried over an Internet access arrangement cannot be individually identified as a technical matter. A dedicated access service carrying this traffic – such as an ADSL offering – is therefore an interstate service.

The Internet is a "global medium of communications" that "links people, institutions, corporations, and governments around the world."[39] Because the Internet

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[38] ALTS Petition at 28.

[39] *American Civil Liberties Union v. Reno*, 929 F. Supp. 824, 830-849 (E.D. Pa. 1996), *affirmed*, 117 S. Ct. 2329 (1997).

is such an expansive "international system,"[40] a single Internet session "may connect the user to information both across the street and on the other side of the world."[41] The FCC has also recognized that, even where one or more of a user's Internet destinations are local or intraLATA, there is no existing mechanism "to support jurisdictional segregation of traffic."[42]

It is well established that it "is the nature of the communication itself rather than the physical location of the technology" that determines the jurisdictional classification of a service.[43] Here, it is inherent in the nature of the Internet that a substantial portion of a user's time "online" will be spent communicating with individuals via e-mail, accessing remote databases, and interacting with web sites outside of his or her home LATA. It is, thus, not surprising that the Commission repeatedly has confirmed the

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[40] *Id.* at 831.

[41] Digital Tornado: The Internet and Telecommunications Policy, OPP Working Paper (March 1997) at 45.

[42] *Id.*

[43] *Petition for Emergency Relief and Declaratory Ruling filed by the BellSouth Corporation*, 7 FCC Rcd 1619, 1621 (1992) *quoting*, *New York Telephone Company v. FCC*, 631 F.2d 1059, 1066 (2nd Circuit 1980) ("*MemoryCall*") (FCC concluded that an out-of-state call to a busy or non-answering number that is forwarded from the called party's serving central office to a voice messaging system does not involve a separable intrastate transmission).

jurisdictionally interstate status of enhanced or information services such as Internet offerings.[44]

The FCC's so-called ESP (or ISP) access exemption is not to the contrary. Indeed, no such "exemption" would be necessary if the traffic were not jurisdictionally interstate. Rather, the agency merely determined for policy reasons that a certain class of interstate traffic should be exempted from payment of federal switched access charges.

Furthermore, it is erroneous to try to segregate portions of an Internet call and treat it as two separate and distinct transactions: a local, intraLATA connection between an end user to his or her ISP and a separate, independent transmission from the ISP location out over the Internet. The FCC long ago discredited such a bifurcated jurisdictional analysis for a single transmission, finding that the establishment of a continuous transmission path across state lines rendered a service jurisdictionally interstate.[45] For these purposes, the rerouting of a customer transmission by an ISP

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[44] *See, e.g., In the Matter of Access Charge Reform*, 12 FCC Rcd. 15982, 16131-32 (1997), *appeal pending* ("In recent years, usage of *interstate* information services, in particular the Internet and other interactive computer networks has increased significantly."; "[A]lthough information service providers (ISPs) may use incumbent LEC facilities to originate and terminate *interstate* calls, ISPs should not be required to pay interstate access charges.") (*emphasis added). Accord, MTS and WATS Market Structure*, 97 FCC 2nd 682, 715 (¶ 83) (1983) further recon, 97 FCC 2d 834 (1984), *aff'd in principal part, National Association at Regulatory Utility Commissioners v. FCC*, 737 F.2d 1095 (D.C. Cir. 1989), cert. denied, 469 U.S. 1227 (1985) (enhanced services are "jurisdictionally interstate"); *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, 3 FCC Rcd 2631, 2631 (1988) (describing enhanced service providers as "interstate service providers").

[45] *MemoryCall* at 1620.

from its node or premise out over the Internet is no different than the rerouting of a long distance call in connection with a voice mail system in *MemoryCall*.

ALTS further attempts to confuse the jurisdictional issue by referencing arguments and authorities appropriate to switched rather than special access arrangements. Although GTE disagrees with ALTS' conclusion from these cases, they do not apply here. For example, GTE's new ADSL service (DSL Solutions) is a dedicated offering, not comparable to traditional dial up access services using standard business lines.[46] Accordingly, the state decisions addressing reciprocal compensation issues are wholly irrelevant to the jurisdictional classification of such an offering.

### F. ALTS' Request to Re-Open CC Docket No. 91-141 for the Purpose of Issuing New Rules Pertaining To Collocation Is Not Necessary.

The ALTS Petition[47] suggests that the Commission should re-open its Docket 91-141 and issue new collocation rules which go far beyond those that have been mandated. Section 251(c)(6) defines collocation as:

> (6) Collocation.--The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.[48]

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[46] See Digital Tornado at 69 ("xDSL modems can be connected directly to a packet network, thus avoiding switch congestion at the same time as they increase bandwidth available to end users.").

[47] ALTS Petition at 21.

[48] 47 U.S.C. §251(c)(6).

In implementing this section of the Act, the Commission, in its *Local Competition Order*, established clear guiding principles which remain viable today, and the ALTS Petition has not provided any compelling evidence that these principles are in need of review, much less revision.

> We find that section 251(c)(6) does not require collocation of equipment necessary to provide enhanced services. At this time, we do not impose a general requirement that switching equipment be collocated since it does not appear that it is used for the actual interconnection or access to unbundled network elements. We recognize, however, that modern technology has tended to blur the line between switching equipment and multiplexing equipment, which we permit to be collocated. We expect, in situations where the functionality of a particular piece of equipment is in dispute, that state commissions will determine whether the equipment at issue is actually used for interconnection or access to unbundled elements.[49]

GTE recognizes that the Commission has the right to reexamine this issue at a later date, but the ALTS Petition offers no justification to completely revamp the Commission's rules on collocation. Many of the issues raised by the ALTS Petition involve a fundamental misconceptions about the availability of floor space in a digital central office.[50] In reconsidering its collocation policy, the Commission must carefully balance these issues. GTE does not believe, however, that the ALTS Petition should

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[49] *Local Competition Order* at ¶580. (Emphasis added.)

[50] The single most prevalent complaint lodged by competitive LECs about collocation is that incumbents too frequently respond to requests for collocation with insufficient space available. The responsibility for deciding space availability disputes properly has been left with the state commissions. Only states have intimate knowledge of these types of local requirements, and only states have the ability to render fair and reasoned decisions when space availability questions are raised.

be the vehicle by which the Commission makes decisions to change the collocation rules that have resulted in more than one thousand agreements across the country. Instead of resurrecting the old collocation proceeding, GTE recommends that the Commission review these collocation issues in the context of advanced data networks in its forthcoming inquiry on Section 706.

## III. CONCLUSION

Accordingly, the Commission should deny the declaratory relief requested by ALTS. Instead of considering these important and complex issues in response to the ALTS Petition, GTE urges the Commission immediately to initiate the inquiry mandated by Section 706 of the 1996 Act.

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Respectfully submitted,

GTE Service Corporation and its affiliated domestic telephone operating companies

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**Certificate of Service**

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "Opposition of GTE" have been mailed by first class United States mail, postage prepaid, on June 18, 1998 to the following parties of record:

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